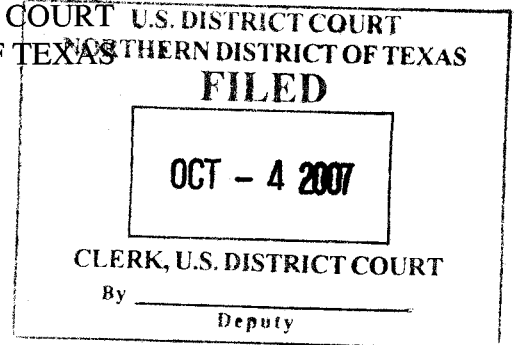


IN THE UNITED STATES DISTRICT COURT U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION



JAMES RICHARD ATKISSON,

Petitioner,

v.

NATHANIEL QUARTERMAN, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

§
§
§
§
§
§
§
§
§
§

2:07-CV-0122

ORDER OVERRULING OBJECTIONS,
ADOPTING REPORT AND RECOMMENDATION,
and DISMISSING PETITION FOR A WRIT OF HABEAS CORPUS

Came for consideration the federal habeas corpus application filed by petitioner JAMES RICHARD ATKISSON. On June 25, 2007, the United States Magistrate Judge issued a Report and Recommendation in this cause, recommending therein that the instant habeas application be dismissed as time barred. Petitioner filed objections to the Magistrate Judge's Report and Recommendation on July 2, 2007 arguing therein that his petition is timely because *Georgia v. Randolph*,¹ one of the Supreme Court cases upon which he bases his argument that his conviction is a result of an unconstitutional search and seizure, was not decided until March 22, 2006. Petitioner contends the limitation period should thus begin on March 22, 2006, "the date on which the constitutional right asserted was initially recognized by the Supreme Court." Petitioner concludes that after tolling the statute of limitations during the pendency of his state habeas proceedings, his

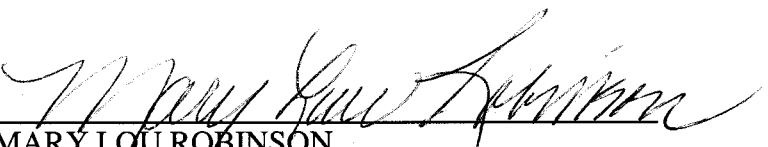
¹*Georgia v. Randolph* held that a physically present inhabitant's express refusal of consent to a police search is dispositive as to him, regardless of the consent of a fellow occupant. The holding had no bearing on the capacity of the police, at the invitation of one tenant, to enter a dwelling over another tenant's objection in order to protect a resident from domestic violence.

federal habeas application is timely filed.

The undersigned United States District Judge has made an independent examination of the record in this case. Petitioner's objections are without merit and are hereby OVERRULED. Petitioner has not shown a constitutional right was newly recognized by the Supreme Court in *Georgia v. Randolph*, nor that any such right was made retroactively applicable to cases on collateral review. Consequently, the Magistrate Judge's Report and Recommendation is hereby ADOPTED. Accordingly, the petition for a writ of habeas corpus is hereby DISMISSED.

IT IS SO ORDERED.

ENTERED this 4th day of October 2007.


MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE